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Subject:— Opinions under the Indian Patents and Designs Act 1911

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Opinions under the Indian
Patents and Designs Act, 1951.

1. O. No. 99-Confl./50-1-51. Question (1) whether there will be any liability on Govt, as a purchaser of the bonds offered by the Steel Age Industries ?
If so, whether any clause in the purchase agreement to the effect that the entire liability should be borne by the producer would absolve Govt. of all liabilities ?
(2) whether the bonds are liable to be attached in case the parties choose to have recourse to a Court of law, which might seriously hamper the election work. 1-6.

2. O.No. 12704/9-8-51 Question whether the patents granted to M/s. J.R.G. Geigy, Basle Switzerland will come in the way of the Govt. of Bombay manufacturing D.D.T. 7-10.

dt. 22-8-'52.

K.S.R.
22/8

Office of the E.L.A.

The proposal is to place an order with the Steel Age Industries, Ltd., for supply of ballot boxes required for the forth-coming general elections of the specifications approved by the Election Commission. In their letter dated 8-1-1951 at p. 149 the Godrej and Boyce Manufacturing Co. Ltd., claim that the ballot box manufactured by the Steel Age Industries which has been approved by the Election Commission infringes their patent rights and have threatened that Govt. is likely to be involved in a legal proceeding.

2. The questions raised for the consideration are-

(1) Whether there will be any liability on Govt. as a purchaser of the boxes offered by the Steel Age Industries ? If so, whether any clause in the purchase agreement to the effect that the entire liability should be borne by the producer would absolve Govt. of all liabilities ?

(2) Whether the boxes are liable to be attached in case the parties choose to have recourse to a Court of Law, which might seriously hamper the election work.

3. Section 21(1) of the Indian Patents and Designs Act, 1911 provides that a patent shall have the like effect against Government as it has against any person.

Contd

Sub-section (2) of sect. 21 of the Act provides that the officers or authorities administering any department of the service of Government may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them and after giving the notice to the patentee, may use or exercise the inventions for the services of the Government, on such terms as may either before or after the use therefor be agreed on, with the approval of the Central Government between such officers or authorities and patentee, or in default of agreement as may be settled in the manner hereinafter provided. Sub-section (4) of section 21 provides that in the event of any dispute as to the making, use or exercise of an invention under this section or the term therefor, the matter shall be referred to the High Court for decision etc.

4. Where the Secretary of War issued a notice for a tender for the supply of 13, 875 rifles of the description known as that patented and the price was settled minus the cost of the steel barels and the stocks which the war office was to supply and where it was agreed that rifles might be rejected by o officers at the war office if not made according to pattern and where the persons who took the contract employed the patented process in the formation and insertion of the lock. The Court held that the contractors were liable to the patentee

for an infringement of the patent, for that they were not servants or agents of the Crown doing the work of the Crown but were private contractors with the Crown to supply a certain manufactured article and were therefore not protected in what they did by any particular privilege attaching to the Crown. In the case under consideration, if the Godrej and Boyce Manufacturing Company files a suit for infringement of the patent before the High Court, they are likely to obtain an injunction from the Court prior to the hearing of the suit restraining the infringer from committing infringement pending the hearing of the suit (page 713 the Law of Patents in India by Armond). If the Steel Age Industries Ltd. is prohibited by an injunction not to manfacture ballot boxes, it will not be possible for them to supply the boxes contracted for to the Government. And in that even though there will not be any liability upon Govt. as a purchaser of ballot boxes, the election might be seriously hampered.

4. It is true that Govt. can take advantage of sec. 21 of the Indian Patents and Designs Act, 1911. But in that case -

(1) The Election Commission by itself or its agents, contractors or others will have to give notice to the patentee;

(2) The Election Commission will have to

settle the terms with the approval of the Central Government with the patentee;

(3) If the terms are not agreed upon between the parties, the dispute will have to be settled before the High Court;

(4) The contract will have to be given on the specific terms that the contractors shall manufacture ballot boxes for Govt. according to the specifications approved and that they shall manufacture steel boxes of the type approved for Government purposes only and not for other purposes. In that case the contractors will be protected in what they do by the privileges attaching to Government under section 21 of the Act.

5. But this would involve Government in payment of compensation to the patentee who is likely to exploit the situation to his full advantage

P.M.Lad
29/1

Remembrancer of Legal Affairs.

U.R. to P.&.S.D. No. dated the January 1950.

MM

dt. 22-6-'56.

Office of the R.L.A.

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2. The questions raised for the consideration are -

(1) Whether there will be any liability on Government as a purchaser of the boxes offered by the Steel Age Industries ? If so, whether any clause in the purchase agreement to the effect that the entire liability should be borne by the producer would assolve Government of all liabilities ?

(2) Whether the boxes are liable to be attached in c ase the parties choose to have recourse to a Court of Law, which might seriously hamper the election work.

3. Section 21(1) of the Indian Patents and Designs Act, 1911 provides that a patent shall have the like effect against Government as it has against any person. Sub-section (2) of

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doing the work of the Crown but were private contractors with the Crown to supply a certain manufactured article and were therefore not protected in what they did by any particular privilege attaching to the Crown. In the case under consideration, if the Godrej and Boyce Manufacturing Company file a suit for infringement of the patent before the High Court, they are likely to obtainx an injunction from the Court prior to the hearing of the suit restraining the infringer from committing infringement pending the hearing of the suit (page 713 the Law of Patents in India by Armond). If the Steel Age Industries Ltd. are prohibited by an injunction not to manufacture ballot boxes, it will not be possible for them to supply the boxes contracted for to the Government. And in that event, even though there will not be any liability upon Government as a purchaser of ballot boxes, the election might be seriously hampered.

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6. But this method would involve Government in payment of compensation to the patentee who is likely to exploit the situation to his full advantage.

R.L.A P.M.Ld.
29/1.

U.R. to P.& S.D. No.99-Cpnfl. dated the 30th January 1951.

dt. 22-6-'56.

Office of the R.I.A.

The question raised for the R.I.A.'s consideration is whether the patent granted to Messrs. J.R.Geigy, Basle, Switzerland, will come in the way of the Government of Bombay manufacturing D.D.T.

A patent is valid only if it covers an 'invention'. An invention is defined under section 2(8) of the Indian Patents and Designs Act, 1911, to mean any manner of new manufacture, and includes an improvement and an alleged invention. In order to be classified as a manner of manufacture an invention must result in some vendible product or cover a method of dealing with some vendible product. Invention must have relation to something tangible; for example, invention relating to new tactics in warfare, new schemes for conducting business or new method of playing foot-ball are not patentable. The term 'manner of manufacture' has been interpreted to cover only inventions of a technical nature. A biochemical process such as the employment of bacterial fermentation to produce acetone had been held patentable, but a patent for a medical process such as a method of extracting lead from the human body has been refused. The mere discovery or an abstract principle does not constitute a manner

of manufacture. A discovery of an existing but hitherto unknown substance is not a manner of manufacture. Similarly, the discovery of a hitherto unknown property or characteristic of a known substance is not a manner of manufacture; for example, the discovery of a previously unknown germicidal and yet non-toxic property of known chemical substance has been held not to be patentable (see 45 R.P.C. 1928 P. 153 Peter) (Meinhardt 'Inventions Patents and Monopoly' p.44).

In the present case, as reported by the Director of Public Health D.D.T. has been in existence for a number of decades and consequently its use as such cannot be patented. The patent which has been obtained by Messrs. Giegy- the Swiss firm- relates to the use of D.D.T. as insecticidal composition suspended, emulsified in a liquid diluent or mixed with inert solid. The Director of Public Health has reported that the kind of formulation which has been adopted by Messrs. Geigy-Swiss firm- and for which they have obtained a patent is a time-honoured method of use in disinfection and disinfestation. If this is so, the principle stated in 45 R.P.C. 1928 page 153 will apply and the patent obtained by Messrs. Geigy firm- can be challenged as invalid.

Two remedies would be open to Government :-

1) A position to the High Court by the Advocate General under section 26(2) for revoking the patent under section 26(1)(d) and (e) of the Patents and Designs Act, 1911; or

Contd.

2) to make a counter claim for revocation of the patent in case the patentee institutes a suit against Government for infringement of the patent (see section 29(1) and the proviso thereto and subsection (2) of the Act.

Sd. J.R.Dhurandhar
8/8.
O.C.
Remembrancer of Legal Affairs.

U.R. to W.D.No.12784 dated the 9th August 1951.

MM
dt. 22-6-'56.